IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3734 of 2007()

CMP.1509/2004 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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REVN. PETITIONER: PETITIONER

THE CHIEF MANAGER AND AUTHORISED
OFFICER, STATE BANK OF TRAVANCORE,
SULTHAN BATHERY, WAYANAD DISTRICT.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENTS: RESPONDENTS & STATE

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1. SRI. P.A.VARGHESE, S/O ABRAHAM,
POLLAYIL HOUSE, MANTADYKUNNU,
SULTHAN BATHERY, WAYANAD.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 3734 of 2007

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Dated: 28-11-2007

ORDER

The revision petitioner who is the authorised officer of the Sulthan Batheri Branch of the State bank of Travancore, challenges the order dated 5-7-2007 passed by the Chief Judicial Magistrate, Kalpetta, Wayanad restraining the revision petitioner from taking possession of the secured asset. The said order was passed on an application filed by the petitioner under Sec. 14 the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "Securitisation Act" for short) seeking the handing over of possession of the secured asset. Upon the revision petitioner filing the aforesaid application before the Chief Judicial Magistrate for taking possession of the secured asset and handing over the same to the revision petitioner, the Chief Judicial Magistrate appears to have issued notice to the respondent herein who is the borrower and after conducting an enquiry and hearing both sides that Court has issued the impugned order as aforesaid. Eventhough notice issued to the

first respondent has been duly served, he has not chosen to enter appearance or oppose this Revision.

2. The impugned order passed by the Chief Judicial Magistrate is ex facie illegal since the Chief Judicial Magistrate when approached with a written request by the secured creditor for possession of the secured asset, has no other alternative except to take possession of the asset and hand it over to the applicant secured creditor. The Magistrate has no authority obligation to issue notice to the borrower or to conduct an enquiry in the matter. As a matter of fact, the provisions of the Securitisation Act do not contemplate any order by the Chief Judicial Magistrate, much less, any judicial proceeding before the Chief Judicial Magistrate. If any person is aggrieved by the **act** of handing over possession of the secured asset by the Chief Judicial Magistrate, his remedy lies under Sec. 17 of the said Act. Eventhough the said provision refers to the remedy as a right of appeal, it is now well settled that it is really an adjudication. **(Vide Mardia Chemicals v. Union of India - 2004 (2) KLT 273).** The remedy of a person aggrieved by the act of the Chief Judicial Magistate, is to make an application before the Debt Recovery Tribunal ("DRT" for short) having

jurisdiction over the matter by paying the prescribed fees and the DRT will make and adjudication on the question and if it is satisfied that possession of the secured asset was not taken in accordance with the provisions of the said Securitisation Act or and the rules, it can order restoration of possession of the secured asset to the borrower under Sub Section 3 of Sec. 17. In appropriate cases, it can also order compensation under Section 19 of the Act. Any person aggrieved by the order of the DRT is given a further right of appeal to the Appellate Tribunal which is also invested of the same powers as that of the DRT. Thus, the act of the Chief Judicial Magistrate in entertaining a written request by the secured creditor for possession and the handing over of such possession to the applicant creditor is not a judicial proceeding which is amenable to judicial review at that stage. This position was elaborately considered by this Court **ILR 2007 (4) Kerala 563 - Sindhu C.R. v. State of Kerala and Others** where it was concluded that while dealing with a written request made by a secured creditor under Sec. 14 of the Securitisation Act, the Chief Judicial Magistrate is not required to give notice either to the borrower or to any other person who may be in possession of the secured asset. The

enquiry conducted by the Chief Judicial Magistrate in this case was wholly without jurisdiction. When the authority which passed the order is suffering from inherent lack of jurisdiction in contra-distinction to irregular exercise of jurisdiction, the order passed by such authority is ultra-vires and null and void. The impugned order dated 5-7-2007 passed by the Chief Judicial Magistrate is accordingly set aside and the Chief Judicial Magistrate directed to assume possession of the secured asset and handover the same to the secured creditor namely, the revision petitioner herein. It goes without saying that if any person is aggrieved by the act of the chief Judicial Magistrate in handing over possession of the secured asset, his remedy lies in moving the D.R.T. under Sec. 17 of the Securitisation Act.

This Revision is allowed as above.

V. RAMKUMAR,
(JUDGE)

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